



U.S. Citizenship
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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: **AUG 14 2006**
[WAC 05 098 79738]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Honduras who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The record reveals that the applicant filed a TPS application during the initial registration period on February 19, 1999, under Citizenship and Immigration Services (CIS) receipt number SRC 99 133 50338. The Director, Texas Service Center, denied that application on November 16, 1999, because the applicant had been convicted of a felony (transporting narcotic controlled substance), and his conviction, therefore, rendered him inadmissible to the United States pursuant to sections 212(a)(2)(A)(i)(II) and 212(a)(2)(C) of the Act. The applicant did not file Form I-290B, Notice of Appeal to the Administrative Appeals Office, within 30 days of the director's decision. The applicant subsequently filed a TPS application on September 25, 2002, under CIS receipt number SRC 03 026 54930. On November 26, 2002, the applicant was requested to submit: (1) evidence to establish his qualifying continuous residence in the United States since December 30, 1998, and continuous physical presence from January 5, 1999, to the date of filing the application; (2) photo identification, or any national identity document from his country of origin; (3) a copy of his birth certificate with English translation; and (4) evidence to establish that he was eligible for late initial registration. In response, the applicant furnished evidence to establish continuous residence and continuous physical presence during the requisite period, and copies of his passport and birth certificate with English translation; however, the applicant failed to submit any evidence to establish eligibility for late registration. Therefore, the Director, Texas Service Center, denied the application on April 25, 2003. The applicant did not file Form I-290B, Notice of Appeal to the Administrative Appeals Office, within 30 days of the director's decision.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on January 6, 2005, and indicated that he was re-registering for TPS.

The director denied the re-registration application because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

On appeal, the applicant asserts that he received a letter stating that his TPS was denied because he failed to file a Request for Asylum, Form I-589, but that he never received the request. The record of proceeding, however, is devoid of any evidence to indicate that such a request was in fact issued to the applicant.

If the applicant is filing an application as a re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. In addition, the applicant must continue to maintain the conditions of eligibility. 8 C.F.R. § 244.17.

In this case, the applicant has not previously been granted TPS. Therefore, he is not eligible to re-register for TPS. Consequently, the director's decision to deny the application will be affirmed.

It is noted that the director's decision does not explore the possibility that the applicant was attempting to file a late initial application for TPS instead of an annual re-registration.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien who is a national of a foreign state designated by the Attorney General is eligible for temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign state designated under section 244(b) of the Act;
- (b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;
- (c) Has continuously resided in the United States since such date as the Attorney General may designate;
- (d) Is admissible as an immigrant except as provided under § 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
 - (1) Registers for TPS during the initial registration period announced by public notice in the *Federal Register*, or
 - (2) During any subsequent extension of such designation if at the time of the initial registration period:
 - (i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;
 - (ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;
 - (iii) The applicant is a parolee or has a pending request for reparole; or
 - (iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.
- (g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of condition described in paragraph (f)(2) of this section.

The initial registration period Hondurans was from January 5, 1999 through August 20, 1999. The record reveals that the applicant filed the current application with CIS on January 6, 2005.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

The burden of proof is upon the applicant to establish that he or she meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by CIS. 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative

value. To meet his or her burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. 8 C.F.R. § 244.9(b).

The applicant has failed to provide any evidence to establish that this application should be accepted as a late initial registration under 8 C.F.R. § 244.2(f)(2). However, the provisions of TPS do not allow approval of any application filed by an individual convicted of a felony or two or more misdemeanors, or found inadmissible to the United States, as is the case in this instance. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). The record indicates the following arrests and/or convictions relating to the applicant:

- (1) The Federal Bureau of Investigation (FBI) fingerprint results report indicates that on April 11, 1992, in Norwalk, California, the applicant was arrested for soliciting prostitution. The report shows that the applicant was subsequently convicted of "LOITER AT ADULT SCHOOL MOLEST PUPILS," 647(b) PC, a misdemeanor. However, the actual, final court disposition of this arrest is not contained in the record.
- (2) USCIS database indicates that on June 4, 1992, in Los Angeles, California, the applicant was arrested for transport/sell narcotic controlled substance, 11352 H&S, a felony. The final court disposition of this arrest is not contained in the record.
- (3) The FBI report indicates that on December 7, 1992, in Los Angeles, California, the applicant (name used: ██████████) was arrested for sodomy with person under 18 years, 286(b)(1) PC, a felony, and battery on a person, 242 PC, a misdemeanor. The report shows that the applicant was subsequently convicted of assault, 240 PC, a misdemeanor; however, the actual, final court disposition of this arrest is not contained in the record.
- (4) On July 28, 1993, in the Superior Court of the State of California, County of Los Angeles, Case ██████████ (arrest date June 4, 1993), the applicant was indicted for sale/transportation/offer to sell controlled substance (cocaine), H&S 11352(a), a felony. On October 5, 1993, the applicant was convicted of the offense. He was placed on probation for a period of 3 years, ordered to spend 180 days in jail, and pay \$250 in fines and costs. Because the applicant violated the terms of his probation, on November 3, 1994, the court ordered the probation extended to November 3, 1997, and that all terms and conditions of original grant of probation to remain in full force and effect, and he was ordered to serve 365 days in jail.
- (5) The FBI report indicates that on October 26, 1993, in Los Angeles, California, the applicant (name used: ██████████) was arrested for transport/sell narcotic controlled substance, 11352(a) H&S, a felony. The final court disposition of this arrest is not contained in the record.
- (6) The FBI report indicates that on August 31, 1996, in Los Angeles, California, the applicant (name used: ██████████) was arrested for robbery, 211 PC, a felony. The final court disposition of this arrest is not contained in the record.

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC 802). Section 212(a)(2)(A)(i)(II) of the Act.

An alien is inadmissible if a consular officer or immigration officer knows or has reason to believe he is or has been an illicit trafficker in any such controlled substance. Section 212(a)(2)(C) of the Act.

The applicant is ineligible for TPS due to his felony conviction, detailed in No. 4 above, and because he is inadmissible to the United States, pursuant to section 212(a)(2)(A)(i)(II) and section 212(a)(2)(C) of the Act, based on his drug trafficking conviction. Sections 244(c)(2)(B)(i) and 244(c)(1)(A)(iii) of the Act. Therefore, the application also must be denied for this reason.

The record contains a Warrant of Deportation, Form I-205, issued in Los Angeles, California, on March 29, 1995, based on the final order of deportation by an immigration judge on March 29, 1995. The applicant was deported to Honduras on April 12, 1995.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. An alien applying for temporary protected status has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet this burden.

ORDER: The appeal is dismissed.